
HOUSE BILL 2036

State of Washington

57th Legislature

2001 Regular Session

By Representative G. Chandler

Read first time 02/13/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to classification, jurisdiction, and use of
2 irrigation district conveyance and drainage facilities; amending RCW
3 77.55.100; and adding a new section to chapter 90.48 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48 RCW
6 to read as follows:

7 Rules adopted by the department under RCW 90.48.260 that may impact
8 a federal reclamation project constructed by the United States in
9 accordance with state and federal law shall be consistent with
10 authorized project purposes and shall not impair authorized project
11 contracts or interfere with the construction, operation, or maintenance
12 of project facilities.

13 The department shall, cooperatively with the United States bureau
14 of reclamation and federal reclamation project irrigation districts,
15 adopt water quality classifications for agriculture and warm water
16 fisheries, adopt rules that consider and reflect the use of constructed
17 storage and conveyance facilities and other water transport systems
18 used for authorized project purposes, and adopt rules that consider and
19 reflect the unique site-specific characteristics of the arid and

1 semiarid regions of the state of Washington where federal reclamation
2 projects are located.

3 **Sec. 2.** RCW 77.55.100 and 2000 c 107 s 16 are each amended to read
4 as follows:

5 (1) In the event that any person or government agency desires to
6 construct any form of hydraulic project or perform other work that will
7 use, divert, obstruct, or change the natural flow or bed of any of the
8 salt or fresh waters of the state, such person or government agency
9 shall, before commencing construction or work thereon and to ensure the
10 proper protection of fish life, secure the approval of the department
11 as to the adequacy of the means proposed for the protection of fish
12 life. This approval shall not be unreasonably withheld.

13 (2)(a) The department shall grant or deny approval of a standard
14 permit within forty-five calendar days of the receipt of a complete
15 application and notice of compliance with any applicable requirements
16 of the state environmental policy act, made in the manner prescribed in
17 this section.

18 (b) The applicant may document receipt of application by filing in
19 person or by registered mail. A complete application for approval
20 shall contain general plans for the overall project, complete plans and
21 specifications of the proposed construction or work within the mean
22 higher high water line in salt water or within the ordinary high water
23 line in fresh water, and complete plans and specifications for the
24 proper protection of fish life.

25 (c) The forty-five day requirement shall be suspended if:

26 (i) After ten working days of receipt of the application, the
27 applicant remains unavailable or unable to arrange for a timely field
28 evaluation of the proposed project;

29 (ii) The site is physically inaccessible for inspection; or

30 (iii) The applicant requests delay. Immediately upon determination
31 that the forty-five day period is suspended, the department shall
32 notify the applicant in writing of the reasons for the delay.

33 (d) For purposes of this section, "standard permit" means a written
34 permit issued by the department when the conditions under subsections
35 (3) and (5)(b) of this section are not met.

36 (3)(a) The department may issue an expedited written permit in
37 those instances where normal permit processing would result in
38 significant hardship for the applicant or unacceptable damage to the

1 environment. In cases of imminent danger, the department shall issue
2 an expedited written permit, upon request, for work to repair existing
3 structures, move obstructions, restore banks, protect property, or
4 protect fish resources. Expedited permit requests require a complete
5 written application as provided in subsection (2)(b) of this section
6 and shall be issued within fifteen calendar days of the receipt of a
7 complete written application. Approval of an expedited permit is valid
8 for up to sixty days from the date of issuance.

9 (b) For the purposes of this subsection, "imminent danger" means a
10 threat by weather, water flow, or other natural conditions that is
11 likely to occur within sixty days of a request for a permit
12 application.

13 (c) The department may not require the provisions of the state
14 environmental policy act, chapter 43.21C RCW, to be met as a condition
15 of issuing a permit under this subsection.

16 (d) The department or the county legislative authority may
17 determine if an imminent danger exists. The county legislative
18 authority shall notify the department, in writing, if it determines
19 that an imminent danger exists.

20 (4) Approval of a standard permit is valid for a period of up to
21 five years from date of issuance. The permittee must demonstrate
22 substantial progress on construction of that portion of the project
23 relating to the approval within two years of the date of issuance. If
24 the department denies approval, the department shall provide the
25 applicant, in writing, a statement of the specific reasons why and how
26 the proposed project would adversely affect fish life. Protection of
27 fish life shall be the only ground upon which approval may be denied or
28 conditioned. Chapter 34.05 RCW applies to any denial of project
29 approval, conditional approval, or requirements for project
30 modification upon which approval may be contingent.

31 (5)(a) In case of an emergency arising from weather or stream flow
32 conditions or other natural conditions, the department, through its
33 authorized representatives, shall issue immediately, upon request, oral
34 approval for removing any obstructions, repairing existing structures,
35 restoring stream banks, or to protect property threatened by the stream
36 or a change in the stream flow without the necessity of obtaining a
37 written approval prior to commencing work. Conditions of an oral
38 approval to protect fish life shall be established by the department
39 and reduced to writing within thirty days and complied with as provided

1 for in this section. Oral approval shall be granted immediately, upon
2 request, for a stream crossing during an emergency situation.

3 (b) For purposes of this section and RCW 77.55.110, "emergency"
4 means an immediate threat to life, the public, property, or of
5 environmental degradation.

6 (c) The department or the county legislative authority may declare
7 and continue an emergency when one or more of the criteria under (b) of
8 this subsection are met. The county legislative authority shall
9 immediately notify the department if it declares an emergency under
10 this subsection.

11 (6) The department shall, at the request of a county, develop five-
12 year maintenance approval agreements, consistent with comprehensive
13 flood control management plans adopted under the authority of RCW
14 86.12.200, or other watershed plan approved by a county legislative
15 authority, to allow for work on public and private property for bank
16 stabilization, bridge repair, removal of sand bars and debris, channel
17 maintenance, and other flood damage repair and reduction activity under
18 agreed-upon conditions and times without obtaining permits for specific
19 projects.

20 (7) This section shall not apply to the construction of any form of
21 hydraulic project or other work which diverts water for agricultural
22 irrigation or stock watering purposes authorized under or recognized as
23 being valid by the state's water codes, or when such hydraulic project
24 or other work is associated with streambank stabilization to protect
25 farm and agricultural land as defined in RCW 84.34.020. These
26 irrigation or stock watering diversion and streambank stabilization
27 projects shall be governed by RCW 77.55.110.

28 A landscape management plan approved by the department and the
29 department of natural resources under RCW 76.09.350(2), shall serve as
30 a hydraulic project approval for the life of the plan if fish are
31 selected as one of the public resources for coverage under such a plan.

32 (8) For the purposes of this section and RCW 77.55.110, "bed" means
33 the land below the ordinary high water lines of state waters. ((This
34 definition does not include irrigation ditches, canals, storm water
35 run-off devices, or other artificial watercourses except where they
36 exist in a natural watercourse that has been altered by man.)) "Bed"
37 and "waters of the state" do not include irrigation canals, ditches,
38 facilities, laterals, drainage ditches, wasteways, storm water run-off
39 facilities or other artificial, man-altered watercourses that use

1 natural watercourses if the natural watercourse, before irrigation
2 development or being altered by man, only conveyed storm event or
3 intermittent, seasonal run-off, or snowmelt and would not, before
4 irrigation development or alteration, have for at least twelve months
5 each year contained fish life.

6 (9) The phrase "to construct any form of hydraulic project or
7 perform other work" does not include the act of driving across an
8 established ford. Driving across streams or on wetted stream beds at
9 areas other than established fords requires approval. Work within the
10 ordinary high water line of state waters to construct or repair a ford
11 or crossing requires approval.

--- END ---